

6

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 14, 2006

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Report on General Lease No. S-5707, All Tree Services, Inc.,
Waimanalo, Koolaulupo, Oahu, Tax Map Key: (1) 4-1-010:048

SUMMARY and RECOMMENDATION:

At the time of the preparation of this submittal, All Tree Services, Inc. ("All Tree Services") had two pending issues: (1) the lack of a building permit from the City and County of Honolulu for its leasehold improvements; and (2) the lack of an approved conservation plan. Based on the reasons stated hereinbelow, staff believes that All Tree Services will ultimately obtain its building permit and conservation plan. Therefore, as long as no further defaults arise, staff is recommending that this current request for forfeiture of GL No. S-5707 to All Tree Services, Inc. be withdrawn, subject to All Tree Services providing to the Department by December 31, 2006: (1) a copy of a building permit issued by County for the improvements situated on the property; and (2) a copy of the soil conservation plan for the property approved by the Board for the Windward Soil Water Conservation District.

JUNE 9, 2006 LAND BOARD MEETING:

At the time this matter last came before the Land Board on June 9, 2006, the tenant was within its sixty (60) day cure period to resolve a Notice of Default dated April 24, 2006 citing All Tree Services for failure to comply with paragraph (7) of the subject lease, entitled "Compliance with laws". Because the tenant had until July 8, 2006 to cure this default, staff recommended and the Board approved a deferral of this matter to this current July 14, 2006 Land Board meeting. Board member Tim Johns asked staff to report on any pending Lease violations, recap the past violations that have since been cured, and to comment on the points raised by William Tam, Esq. at the June 9, 2006 Land Board meeting. Below is an excerpt of the approved minutes of the June 9, 2006 Land Board meeting:

"Bill Tam, representing the Waimanalo Ag Association appeared before the Board and raised four points: 1) All Tree Service, Inc. was allowed to bid on the subject lease based on plans submitted to the department but All Tree Service, Inc. did not follow through with those plans and based on the changed plans they would not qualify as a bidder. Mr. Tam acknowledged Dean Okimoto would be submitting a declaration stat[ing] the above

point. They will also submit declarations from four other bidders who bid for the subject property (but did not win) detailing their particular issues; 2) All Tree Service, Inc. has invested money in activities which are not authorized by the lease; 3) The lessees had an oral sublease with Mr. Kendrick; and 4) There are buildings on the property constructed without permits."

OUTSTANDING LEASE ISSUES:

1. Compliance with laws:

Department of Planning and Permitting (DPP) of the City and County of Honolulu issued a Notice of Violation dated April 20, 2005, regarding the modular building with wood deck and roof covering which were built without permit. DLNR issued a Notice of Default (NOD) dated April 24, 2006, citing All Tree Services for failure to comply with paragraph 7 of the subject lease, entitled "Compliance with laws". All Tree Services was provided sixty (60) days to cure this default. The cure period expired on July 8, 2006.

By way of letter dated June 28, 2006 from Mr. Kali Watson, attorney for All Tree Services, All Tree Services is currently in the process of obtaining approvals from the appropriate county agencies before DPP will issue it a building permit. (Exhibit A) Mr. Watson also referred staff to the DPP's website for the current status of All Tree Services' building permit application. (Exhibit B)

2. Conservation plan:

Paragraph 42 of the subject lease provides:

"Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within one (1) year following lease commencement. The conservation plan shall include, but not be limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) day of the notice, to cure the fault and submit proof satisfactory to the

Chairperson."

All Tree Services has never been issued an NOD for the lack of a conservation program. In part, this was due to a backlog of pending requests with the Natural Resources Conservation Service (NRCS), a federal agency, from various agricultural tenants and farmers requesting assistance in preparing a conservation plan. The NRCS assists in the preparation of these plans at no charge. While professional assistance in the preparation of a conservation plan is one option, this will generally cost thousands of dollars for professional service, and most farmers opt for the free federal assistance available through NRCS.

Guilherme Costa, Conservation Specialist with the NRCS, advised staff that All Tree Services does not have an approved conservation plan. The first step would be for All Tree Services to get approval from the Board for the Windward Soil Water Conservation District (SWCD) as a cooperator. It then would work with NRCS staff for a specific plan for All Tree Services' premises and once staff approves, then seek the SWCD Board's approval on the conservation plan. The NRCS staff, in the recent past, has been reluctant to work with All Tree Services while it was under threat of lease termination. However, DLNR staff has cleared up with Mr. Costa that NRCS should work with All Tree Services on achieving an approved conservation plan.

STAFFS' RESPONSE TO ISSUES RAISED BY MR. TAM:

Staff notes the issues raised by Mr. Tam and comments as follows:

1. Qualification as a bidder: All Tree Services provided a two page business plan for each parcel it bid on at auction. See Exhibit C. Items 17, 25 and 26, address how will the land be used, what improvements will be made, and how will the land be developed from the beginning of the lease until it is in full operation.

There is no language in the lease that ties in to the business plan and requires literal compliance. Staff knows of no reason why a business plan cannot be amended after lease commencement to accommodate changing circumstances. Mr. Tam does not provide an explanation regarding how a change in plans leads to the conclusion that All Tree Services would not qualify as a bidder.

2. Investment of money in activities not authorized by the lease: The business plan, item 25, details All Tree Services intended improvements and costs as "Irrigation \$10,000, Land clearing \$5,000, Perimeter improvements \$3,500" All Tree Services, in accordance with its presentation to the Land Board, detailed improvement expenses of several hundred thousand dollars. Certain of the improvements, in

particular the size of the asphalt parking lot, are more supportive of a baseyard operation than a purely agricultural operation. Therefore, staff is in general agreement with Mr. Tam, however, staff notes that All Tree Services invested in these improvements at its own peril, and now must seek to recover its capital expenses solely from use of the property for intensive agriculture.

3. All Tree had an oral sublease with David Kendrick: Staff notes Mr. Watson's statements that Mr. Kendrick was solely a paid consultant. All the suggestions that a sublease existed appear to be based on circumstantial evidence, therefore staff cannot confirm the truth of this allegation.
4. There are buildings on the property constructed without permits: Staff agrees Mr. Tam is correct in this assertion.

Another letter from Mr. Tam summarizing his concerns was received since the June 9, 2006, Board meeting and is attached as Exhibit D. A reply to this letter was received from Mr. Watson and is attached as Exhibit E.

NEW DEFAULTS:

None.

PAST/CURED DEFAULTS:

1. Character of use:

A Notice of Default (NOD) dated November 17, 2005, was issued to All Tree Services, Inc. for failure to comply with paragraph 12 of General Lease No. S-5707 under "Character of use" which states "The Lessee shall use or allow the premises to be used solely for intensive agricultural purposes."

The lease further provides that " 'Intensive agriculture' means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry."

The City and County advised that a baseyard is not a permitted use pursuant to the site's Ag-2 zoning.

The above Notice of Default has been resolved. Staff noted that site inspections conducted on May 3, 2006 and more recently on June 19, 2006 between the hours of 4:30 p.m. to 6:15 p.m., and again on June 23, 2006, between the hours of 6:30 a.m. to 8:00 a.m., revealed no signs of any baseyard activities nor any signs of retail sales of kiawe wood being conducted on the property.

Staff noted that trucks and equipment related to the tree

trimming operation of All Tree Services previously stored on the property have been removed from the site and the property appears now to be used solely for a nursery operation, consistent with the intensive agriculture character of use stated in the lease.

2. Rental Payment:

A Notice of Default (NOD) dated March 20, 2006 was issued to All Tree Services, Inc. for the delinquent rent amount of \$7,500 for the period March 1, 2006 through August 31, 2006.

The NOD had a thirty (30) day cure period from the date of receipt of the Notice, March 30, 2006. All Tree Services cured the default before the expiration of the cure period.

3. Performance Bond:

An NOD dated March 31, 2006 was issued to All Tree Services for its expired surety bond policy in the amount of \$30,000 submitted for the performance bond lease requirement. The NOD provided a cure period of sixty (60) days from the date of receipt of the letter, April 7, 2006, to cure the default.

All Tree Services cured the default for the performance bond on May 10, 2006.

The tenant is otherwise current on rent and liability insurance.

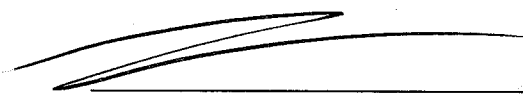
CONCLUSION and RECOMMENDATION:

Notwithstanding the multiple violations and problems staff has had with All Tree Services, staff acknowledges All Tree Services' actions to cure the various defaults, and its efforts appear to have been made in good faith.

Staff notes that the issuance of a building permit by the County Building Department has been held to be merely a ministerial act, and is not a discretionary function. Accordingly, staff believes that the County will ultimately issue the building permit; it's just a matter of time. Therefore, as long as no further defaults arise, staff is recommending that this current request for forfeiture of General Lease No. S-5707 to All Tree Services, Inc. be withdrawn, subject to All Tree Services providing to the Department by December 31, 2006: (1) a copy of a building permit issued by the County for the improvements situated on the property; and (2) a copy of the soil conservation plan for the property approved by the Board for the Windward Soil Water Conservation District by December 31, 2006.

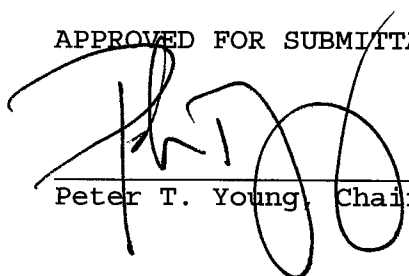
July 14, 2006

Respectfully Submitted,



Russell Y. Tsuji
Land Division Administrator

APPROVED FOR SUBMITTAL:



Peter T. Young, Chairperson

PAVEY HOKE & WATSON, LLC

A Limited Liability Law Company

JUDITH ANN PAVEY
RICHARD L. HOKE, JR.
KALI WATSON

FLORENCE F. PAJARDO
Paralegal

June 28, 2006

Mr. Stephen Lau
Land Manager
Dept. of Land & Natural Resources
State of Hawaii
1151 Punchbowl Street, Room 220
Honolulu, Hawaii 96809-0621

Re: All Tree Services, Inc.

Dear Mr. Lau,

This letter is to confirm our earlier discussion regarding the status of All Tree Services, Inc. building permit application. The application with the improvements as approved by DLNR has been submitted to the City's Building and Permitting Department. It is being processed and is close to approval. The State Health Department, Board of Water Supply and Zoning Department have already approved the application. The City's Engineering Department requested additional historical information regarding the drainage for the site, which was incorporated in the drawings and submitted. We are now awaiting this final approval. Because no major grading or excavation was done on the site we thought that our original application, which indicated no change in the drainage would be acceptable. However, as mentioned, this additional requested information needed to be submitted. We are now just awaiting this final approval. We will advise you as soon as the permit is approved.

If you should have any further questions, please feel free to contact me.

Sincerely,



Kali Watson

cc: Rodrigues

EXHIBIT "A"

RECEIVED
LAND DIVISION
2006 JUN 30 A 10:36
DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

City & County of Honolulu Department of Planning and Permitting (

Tax Map Key

DEPARTMENT

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TMK: 4-1-010:048
Historical TMK Sequence:
Area (sq ft): 228951.
Area (acres): 5.256
Lot Number:
Ohana:

LAND CONTROL CODES

Code Type	Code Description
FLOOD ZONE	FIRM ZONE D
HEIGHT LIMIT	25 FEET
HISTORIC SITE REGISTER	NO
LOT RESTRICTIONS	NONE
SMA/SHORELINE	NOT IN SMA
SPECIAL DISTRICT	NOT IN SPECIAL DISTRICT
STATE LAND USE	AGRICULTURAL DISTRICT
STREET SETBACK	NONE
ZONING (LUO)	AG-2 GENERAL AGRICULTURAL DISTRICT

FACILITIES

Facility Code	Year Built	No. of
01 - Detached Dwelling (detached from property line on all sides)	1975.	1.

TMK SEPARATIONS

Activity Code	Census Tr
83 - FIELD CROP-NOT SUGAR CANE & PINEAPPLE (PAPAYA, MACADAMIA NUT)	113.01

Address List:

960 - WAIKUPANAHA ST

Cancel

Submit

EXHIBIT "B"

City and County of Honolulu
Department of Permitting & Planning
650 So. King St, Honolulu, HI 96813

City & County of Honolulu Department of Planning and Permitting (

Tax Map Key

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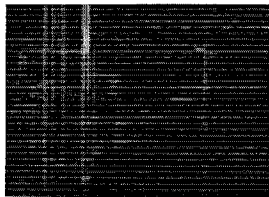
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Details | Warnings | Permits | Owners | History | Assessments | Str Setbacks | Parcel I

Warning	Permit Type	Application No.	Permit No.	Description
	Building Permits (PRIM)		001344-T(HIST < 1973)	WILLIAM FL
	Building Permits (PRIM)		001499-T(HIST)	WILLIAM FL ,EL,PL,OT
	Building Permits (PRIM)		018897(HIST)	WILLIAM FL ,AL,EL,PL
	Building Permits (PRIM)		056739(HIST)	M/M WILLIA - ,NB,EL,PL
	Building Permits (PRIM)		076847(HIST)	WILLIAM FL ,NB,EL,PL
	Building Permits (PRIM)		106267(HIST)	BILL FULLE ,EL,PL,OT
	Building Permits (PRIM)		123604(HIST)	JAMES FUL
	Building Permits (PRIM)		156097(HIST)	WILLIAM FL ,EL,PL,OT
	Building Permits (PRIM)		174192	PUNG - EL,(
	Building Permits (PRIM)	A1984-10-1199	199687	WILLIAM FL NB,EL,PL
	Building Permits (PRIM)	A1990-01-0905	280260	FULLER - N
	Building Permits (PRIM)	A1990-01-0906	280259	FULLER - O
	POSSE Building Permit	A2001-10-0043	526782	(BP #526782; 41010048] S HAWAII - DL INSTALL NE HT CHAINLI ALONG WAIKUPAN,
	POSSE Building Permit	A2005-01-0061		[TMK: 4101C ALL TREE S INC -- NEW BUILDING
	POSSE Building Permit	A2006-05-1592		[TMK: 4101C TREE SERV NEW BATHF BUILDING
	POSSE Building Permit	A2006-05-1593		[TMK: 4101C TREE SERV NEW SHADI



City & County of Honolulu Department of Planning and Permitting

Building Permit
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Building Permit

Application Number:	A2006-05-1592	Job Number:	024354699
Description:	[TMK: 41010048] ALL TREE SERVICES - NEW BATHROOM BU		
Created Date:	May 26, 2006		
Issued Date:		Completed Date:	
Status:	Plans review in progress		
Specific Location:	41-960 WAIKUPANAHA ST		

Tax Map Key
Warnings Description


TMK 4-1-010:048 [228951 sq ft.] 5.256 ac. ID= 97700 41-960 WAIKUPANAHA

Details

Staff Assignment:	Bldg Plans Review	Is this a City Project?:
		Job Address(if not primary):

Estimated Value of Work:	\$25,000.00	Remarks:
Accepted Value:		
Require Plan Review Fee?	<input type="checkbox"/>	
Occupancy Group Category:		Structure Code:
Occupancy Group:		Require Affidavit:
Ownership:	01 - Private	Require Special Inspection:
Proposed Use:		Require Called Inspection:
Floor Level:		Certificate of Occupancy must issued before building is occupied:
Types of Construction (Min):		FLOOD HAZARD DISTRICT
Types of Construction (Actual):		Flood Hazard District:
Number of Existing Stories:		<input type="checkbox"/> Complied
Number of Final Stories:		<input type="checkbox"/> Exempt
Existing Floor Area:		<input type="checkbox"/> As-Built Elevation Certificate
New Floor Area:		RESIDENTIAL UNITS CODE
Total Floor Area:		
Building Inspection Required:		Number Units - Added:

Electrical Inspection Required:
Plumbing Inspection Required:
Plumbing Phases:
Electrical Phases:

Number Units - Deleted:
HOTEL ROOM CODE
Number of Rooms - Added:
Number of Rooms - Deleted:
Location where Permit was cr
Location where Permit was iss

Type of Work

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> New Building | <input checked="" type="checkbox"/> Electrical Work | <input type="checkbox"/> Solar |
| <input type="checkbox"/> Foundation Only | <input type="checkbox"/> Electrical Meter Only | <input type="checkbox"/> Heat Pump |
| <input type="checkbox"/> Shell Only | <input type="checkbox"/> Fire Alarm | <input type="checkbox"/> Antenna |
| <input type="checkbox"/> Addition | <input checked="" type="checkbox"/> Plumbing Work | <input type="checkbox"/> Temporary |
| <input type="checkbox"/> Alteration | <input type="checkbox"/> Fire Sprinkler | <input type="checkbox"/> Relocation To |
| <input type="checkbox"/> Repair | <input type="checkbox"/> Air Conditioning | <input type="checkbox"/> Relocation From |
| <input type="checkbox"/> Demolition | <input type="checkbox"/> Ohana | Other: |
| <input type="checkbox"/> Fence | <input type="checkbox"/> Pool | |
| <input type="checkbox"/> Retaining Wall | | |

Driveway, Sewer, Retrofit**RIGHT-OF-WAY WORK**

Driveway: ☐ New ☐ Existing ☐ Private **RETR**
Driveway Types: No. of
Linear Feet of Driveway: No. of
Sidewalk Types: No. of
Linear Feet of Sidewalk: No. of

Curbing Types:
Linear Feet of Curbing: **MAJC**

- ☐ Cc
☐ Hc
☐ In
☐ Re

SEWAGE

Sewer Connection Permit No.:

Sewage Disposal Type: ☐ Existing ☒ New ☐ (none)

Sewage Disposal Method: ☐ Aerobic Unit ☐ Cesspoc
☐ Private Sewage Treatment Plant ☐ Public S
☒ Septic Tank ☐ (none)

Cancel **Submit**

City and County of Honolulu
Department of Permitting & Planning
650 So. King St, Honolulu, HI 96813
Fax: (808) 527-6743

City & County of Honolulu Department of Planning and Permitting

Building Permit

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Details | Approvals | Applicant/Contractors | Plan Reviews | Inspections |

- | | | |
|---|--------------------------------------|--------------|
| <input checked="" type="checkbox"/> CEB | Date CEB Approved: | mmm dd, yyyy |
| <input type="checkbox"/> TRB | Date TRB Approved: | mmm dd, yyyy |
| <input type="checkbox"/> WWB | Date WWB Approved: | mmm dd, yyyy |
| <input checked="" type="checkbox"/> ZPRB | Date ZPRB Approved: | mmm dd, yyyy |
| <input checked="" type="checkbox"/> BWS | Date BWS Approved: | Jun 9, 2006 |
| <input checked="" type="checkbox"/> State-Health (Wastewater) | Date DOH (Wastewater) approved: | mmm dd, yyyy |
| <input type="checkbox"/> State-Health (A/C Ventilation) | Date DOH (A/C Ventilation) Approved: | mmm dd, yyyy |

- | | |
|---|---|
| <input type="checkbox"/> DFM - Road Maintenance Division | <input type="checkbox"/> State - Agriculture |
| <input type="checkbox"/> DDC - Street Lighting | <input type="checkbox"/> State - ATDC |
| <input type="checkbox"/> Dept. of Environmental Svcs. | <input type="checkbox"/> State-Coastal Zone Mgmt. |
| <input type="checkbox"/> Dept. of Transportation Services | <input type="checkbox"/> State - DAGS |
| <input type="checkbox"/> Dept. of Community Services | <input type="checkbox"/> State - Div. Industrial Safety |
| <input type="checkbox"/> Dept. of Enterprise Services | <input checked="" type="checkbox"/> State-DLNR (Cons & Coastal Lands) |
| <input type="checkbox"/> Finance | <input type="checkbox"/> State-DLNR (Historical Site) |
| <input type="checkbox"/> Hawaii Reserves, Inc. | <input type="checkbox"/> State-DLNR (Land Division) |
| <input type="checkbox"/> Hawaiian Electric | <input type="checkbox"/> State-DLNR (Parks) |
| <input type="checkbox"/> HECO - Joint Pole | <input type="checkbox"/> State-DOT (Airports) |
| <input type="checkbox"/> Hawaiian Telcom | <input type="checkbox"/> State-DOT (Harbors) |
| <input type="checkbox"/> Gasco | <input type="checkbox"/> State-DOT (Highways) |
| <input type="checkbox"/> Honolulu Fire Dept. | <input type="checkbox"/> State - Hawaii Community Dev. Auth. |
| <input type="checkbox"/> HPD | <input type="checkbox"/> State - Hawaiian Home Lands |
| <input type="checkbox"/> Oceanic Cablevision | <input type="checkbox"/> State-Health (Sanitation) |
| <input type="checkbox"/> Parks | <input type="checkbox"/> State - HCDCH |
| <input type="checkbox"/> Private Associations | <input type="checkbox"/> State - Land Use Commission |
| <input type="checkbox"/> Sandwich Isles Communication | <input type="checkbox"/> University of Hawaii |
| <input type="checkbox"/> AT&T | |

Other Agency:

Other Agency:

Cancel

Submit

City and County of Honolulu
Department of Permitting & Planning
650 So. King St, Honolulu, HI 96813
Fax: (808) 527-6743
E-mail: info@honoluluodpp.org

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15. Attach at least two (2) reference letters from people, who are not related to you, verifying agricultural background (applies to farm laborer or previous farm experience).

Part III: Business Plan

Complete one Business Plan for each item/parcel which you intend to bid on. (Copy and attach additional plans as needed.)

16. Item No.: 1 Location: Lot 6, Waimanalo Agricultural Subdivision
17. What will the land be used for? List the goals and objectives to utilize and develop the land:
The land will be used to establish an environmental effective
nursery, along with our goal to incorporate our current business
of uprooting and replanting various trees to become a core provider
18. What products will be sold? in landscaping and generate a profitable
income in the years ahead.
Various trees, flowering plants and ground coverings
19. What is the projected yearly level of production?
The farm should generate an average of \$450,000 gross per
year when fully productive.
20. What is the demand for your products in the near- and long-term?
The demand for both near and long term is extremely strong
as with our products of both various trees and ground coverings
are in high demand with many projects currently and in the future
21. Who are your primary customers and how will the products be distributed?
From landscaping companies, homeowners, construction companies
to local and government agencies. Distribution will vary with
type and location of our products.
22. What is your pricing strategy?
Prices will depend upon the on-going demand of any particular
product and seasonal availability.
23. How will you market your products?
Our trees will be marketed through our nursery and our ads in the
local directory and our website. As supply increases in growth
productivity we will promote accordingly and provide information
and prices on specific products.

24. Who are your major competitors and what is your competitive strategy?
Our competitors will be other nurseries and landscape companies
and our competitive strategy will be in the handling & caretaking
along with the pricing and delivery of service for all our
products that will be most cost effective for our customers.
25. What improvements to the land do you intend to make and at what cost?
Irrigation \$10,000, Land clearing \$5,000, Perimeter improvements
\$3,500 The land will be prepared and used for planting various
trees and flowering plants which could be sold in sooner time
while the tree develop.
26. How will you develop the land from the beginning of the lease until it is in full operation?
Give estimated times required by each major activity and projected percentages of
development. (Your projection must show at least ____ % development in ____ years and
____ % development in ____ years. (See Full utilization of the land in the draft lease.)
The land will be grubbed of existing trees and brushes by a
tractor and/or backhoe. The ground will be treated and the perimeter
will be graveled and eventually fenced.
The estimating time frame for each activity will depend on
the availability of equipment in the grubbing of the existing
property.
27. How will you finance the operations?
The equipment, irrigation system and all other start up costs
(fuel, repair, maintenance) will come from our current business
and personal savings.
28. What problems are anticipated in carrying out this plan and how will you resolve them?
Our major concern will be the existing ground, the insects and
weeds. We will resolve by staying on the problem as it occurs.



June 30, 2006

Mr. Peter Young
Chairperson
Board of Land and Natural Resources
State of Hawaii
1151 Punchbowl St.
Honolulu, Hawaii 96813

Attn: Russell Tsuji, Administrator,
Steve Molmen, Supervising Land Agent
Land Management Division

**Re: All Tree Services, Inc. - State Lease Violations
State General Lease No. S-5707
Waimanalo, Koolaupoko, Oahu.
TMK (1) 4-1-010: 048**

Dear Mr. Young:

Concerned Waimanalo farmers have repeatedly provided information to and testified before the Board of Land and Natural Resources ("BLNR") about violations by All Tree Services Inc. ("All Tree") of its State Agricultural lease in Waimanalo. All Tree outbid long established farmers at a public auction for a state Ag lease and deprived those farmers of the use of the property. The lease expressly states "[t]he lessee shall use or allow the premises leased to be used solely for intensive agricultural purposes."

All Tree was qualified by an independent review panel to bid for the Ag lease on the basis of a business plan which provided only for intensive agriculture. All Tree subsequently acted, not in accordance with the plans it had submitted and on the basis of which All Tree had been "qualified" to bid, but to conduct a tree trimming business, base yard, green waste dump site, roll-on / roll-off storage yard, and kiawe sales business. None of these activities are "intensive agriculture." "Agriculture" is defined as "the science or art of cultivating land in the raising of crops, tillage, husbandry, farming; the production of crops, livestock or poultry; agronomy." Webster's Unabridged Dictionary. "Agronomy" is defined as "the science of soil management and the production of field crops." *Id.*

While landscape nurseries sometimes use trucks to deliver plants grown on the land, All Tree contracted to do tree trimming operations on other lands and then use the state land to park their trucks and dump

American Savings Bank Tower
18th Floor
1001 Bishop Street
Honolulu, Hawai'i 96813
Phone: (808) 524-1800
Fax: (808) 524-4591

Palani Court, Suite 104
74-5620 Palani Road
Kailua-Kona, Hawai'i 96740
Phone: (808) 326-7979
Fax: (808) 326-4779

www.ahfi.com

EXHIBIT "D"

Mr. Peter Young
Chairperson
Board of Land and Natural Resources
State of Hawaii
Attn: Russell Tsuji, Administrator,
Steve Molmen, Supervising Land Agent
Land Management Division
June 30, 2006
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green waste. The rationalization: mulch for prospective trees. The reality: an industrial service enterprise at below market rent. All Tree also conducted a roll on / roll off business and sold kiawe wood (collected from other locations), neither of which bore any relation to producing crops. Until All Tree was caught, it did not grow plants or engage in the "science of soil management" except nominally for appearances sake. Little has changed.

Each time All Tree was caught, it invented a new explanation. Pressed to explain its business activities, All Tree rationalized its conduct, feigning ignorance and innocence. Then, ignoring its own business plan, All Tree blamed DLNR for not explaining what "intensive agriculture" meant. These are shell games intended to mask business investments and activities that had nothing to do with "intensive agriculture" and had everything to do with inexpensive rent for a tree trimming business and a place to dispose of green waste for free.

All Tree seeks the sympathy of Board members, the DLNR staff, and the public generally by pointing out how much money All Tree invested. What All Tree does not say is that:

1. The investments were in asphalt parking lots and infrastructure designed for uses other than intensive agriculture and which the State lease does not allow. The conceit was that anything "related to agriculture" (short of a multiple story building) could be done on agricultural land. It was a self defining proposition.
2. Experienced farmers who must make intensive agricultural business pay for itself would never have paid the prices All Tree did for the services, nor would they have invested in the kind of infrastructure All Tree did. In essence, All Tree paid too much and for the wrong things.

All Tree thought it could get away with its plan since "others were doing it" and the government was not enforcing the zoning or lease terms elsewhere.

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The Hawaii Supreme Court recently rejected the defense that a "custom and practice" had arisen of not following certain laws and that it would be "unfair" to enforce those laws now. Specifically, a county subdivision ordinance required specific information in the subdivision applications. Applicants did not produce the information because in their view it was an "unnecessary waste of effort." The court rebuked that position. *Leslie v. Board of Appeals of the County of Hawaii*, 126 P.3d 1071 (Haw. 2006) The fact that a legal obligation is inconvenient, expensive, or a "waste of time" does not justify ignoring the law.

The list of legal obligations which All Tree found "unnecessary" is instructive.

1. All Tree submits a business plan to qualify as a bidder for a state lease designated for "intensive agriculture." 2004
2. All Tree out bids established qualified farmers who need the land to expand their businesses and obtains lease beginning Sept. 4, 2004.
3. All Tree runs three businesses from State property. None are authorized under the lease terms. This conduct by its own terms undoes the very business plan by which All Tree was qualified to bid and per force disqualifies All Tree as a "qualified farmer."

As the Hawaii Supreme Court ruled in *State of Hawaii v. Kahua Ranch*, 47 Haw. 28 (1963), the terms of a state lease let at public auction may not be modified or reformed by the parties (even if they agree) without violating the public and the other bidder's interests in and rights to the same terms. All Tree's conduct of business other than what was authorized under the lease was and is more than a just a matter for administrative rebuke and correction. All Tree's intentional misconduct disqualifies All Tree from the lease and may constitute fraud upon the other failed bidders.

4. All Tree constructs office building with a large lanai without building permit.

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5. DLNR cites All Tree for lease violations. November 23, 2005. All Tree fails to cure within 60 days (January 22, 2006). DLNR site inspections in February 3 and 6, 2006 disclose base yard activities. DLNR recommends lease be cancelled at March 10, 2006 BLNR meeting.
6. All Tree submits building plan for structure that is smaller than the structure already built. DLNR Director Peter Young approves the plan unaware that the structure is already built and larger than the one on the plans he approved. All Tree's large lanai is not shown on the plans signed by Peter Young. All Tree should submit under penalty of perjury the exact documents submitted to the County for approval.
7. All Tree submits a modified building plan using Peter Young's original signature without his knowledge or approval. A small lanai is shown. It is substantially smaller than the actual lanai built six months earlier.
8. All Tree and Mr. David Kendrick entered into a business arrangement by which Mr. Kendrick would run the operation on state property using Mr. Kendrick's plants. By verbal agreement Kendrick was a de facto sub-lessee. Kendrick and All Tree were negotiating a 80/20 partnership as Alchemy LLC. The BLNR was never informed and never consented. All Tree now claims it "bought out" Mr. Kendrick. From what? A sub-lease? A partnership? A consultant agreement for which he was to be paid nothing?
9. All Tree has not obtained the required Soil and Water Conservation plan.
10. All Tree's engineer Roland Ejercito wrote a letter (May 9, 2006) in which he states that the second set of building plan drawings were "concurrently submitted to the City for permitting purposes without any DLNR stamp on them. They were reviewed by the zoning department and approved." In the next paragraph, Mr. Ejercito states, "[t]he City refused to issue a Building Permit without DLNR's approval of these drawings." Which was it? Building plans are not submitted concurrently; they are submitted sequentially.

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11. In the same letter, Mr. Ejercito continues, "[s]ince that time, however, Mr. Rodriques for business reasons decided to proceed with the construction assuming that this procedural matter would be taken care of in a timely fashion." Procedural matter? All Tree had no building permit. There is no statutory exception to build without a permit for business reasons. It was and continues to be illegal.

Agricultural land is difficult to find in Waimanalo. Experienced farmers needed this parcel to grow their crops and expand their businesses.

Waimanalo's agricultural lands are becoming base yards, construction sites, repair shops, and green waste dumps. The use of Waimanalo's agriculturally zoned land for these industrial and non-agricultural purposes presents a growing risk to the community. The law is not ambiguous on these points. It is clear.

1. State and county land use and environmental laws prohibit base yards, vehicle repair shops, green waste dumps, and storage of construction materials on lands designated Agriculture.
2. The Department of Health requires a permit to store green waste because of the potential fire hazard.
3. Grading and/or filling require a permit to protect against storm water runoff and potential flooding.
4. State land leased at public auction for "intensive agricultural use" by the Department of Land and Natural Resources restrict the activities on these lots to the designated use
5. The County requires building permits *before* you construct a building--not afterward.

As abuses of agricultural land escalated and spread, long time Waimanalo farmers see farm lots turned into industrial parks and the character of Waimanalo forever changed.

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Waimanalo deserves a variety of businesses, but not every type. Without reasonable land use and lease restrictions, the character and definition of Waimanalo will be lost. There must be a plan and there must be limits. That is the purpose of zoning and lease terms. Not all uses are permitted. That is the benefit and the burden of zoning and lease restrictions.

For these reasons, the All Tree lease should be cancelled immediately.

Very truly yours,

William M. Tam /s/

William M. Tam

(original signature to follow)

PAVEY HOKE & WATSON, LLC

A Limited Liability Law Company

JUDITH ANN PAVEY
RICHARD L. HOKE, JR.
KALI WATSON

FLORENCE F. PAJARDO
Paralegal

July 5, 2006

Mr. Peter Young
Chairperson
Board of Land and Natural Resources
State of Hawaii
1151 Punchbowl Street
Honolulu, Hawaii 96813

Re: All Tree Services, Inc.

Dear Mr. Young,

This letter is to respond to the letter dated June 30, 2006 from Mr. William Tam, attorney for Mr. Tom Statton. All Tree Services, Inc. has been operating its intensive agricultural nursery for awhile. Besides DLNR staff, a fellow Board member visited the site and verified the proper use of the property. I believe that Mr. Tam is disingenuous when he says "Little has changed." On the contrary, All Tree Services has done a lot to fully comply with all its lease terms. Since being cited for various violations, Mr. Terry Rodrigues has sold his roll-off business, relocated his tree trimming and kiawe businesses; and developed the property into an intensive agricultural nursery with the assistances of several Waimanalo nurserymen. As to the points raised at the last Board meeting, its conservation plan is being processed and the processing of its building plan permit is 90% completed, with improvements that were reviewed and approved by DLNR.

The *Leslie v. Board of Appeals of the County of Hawaii* case cited by Mr. Tam is inapplicable to this situation. All Trees is not using the defense that a "custom and practice" had arisen of not following certain laws and that it would be "unfair" to enforce those laws now. It is following the terms and conditions of its State lease. It is not disputing or contesting the use of the property strictly for intensive agriculture or trying to have the Board approve the prior nonconforming uses.

Mr. Rodrigues of All Trees submitted a business plan which disclosed his intent to incorporate his current tree trimming business with the nursery. Mr. Tam is correct that All Trees was qualified by an independent review panel to bid for the Ag lease based on this plan. His goal was to try and salvage trees from his tree trimming business. Based on discussions with DLNR staff he was first lead to believe that it was ok to run his tree trimming business out of this site. This has changed and so has Mr. Rodrigues. While he has and continues to indirectly incorporate the business by using and converting the

EXHIBIT "E"

trimmings into mulch for his plants and trees, the base yard has been relocated. Use of the tree trimmings for mulch at the nursery is legitimate and appropriate.

While the costs of his improvements have exceeded the amount originally intended under the business plan, the improvements are not incompatible or violative of the lease. In fact, they have been approved by DLNR. Whether he is able to recoup or justify said expenses is his business challenge, but in no way serves as a justification for terminating his lease. There is nothing in the lease or law that prevents a lessee from revising or changing his business plan, as long as it is consistent with the lease terms and conditions. This is very common and has been done many times with other lessees. To argue that this constitutes "misconduct" which "disqualifies All Tree from the lease and may constitute fraud upon the other failed bidders" is ludicrous.

As to the building permit violation, this is being resolved. As previously mentioned, the building plans have been approved by DLNR and are being processed by the City Building Permit and Planning Department. The Board of Water Supply, the Zoning Branch and the State Department of Health have all approved said plans. The only remaining entity is the Civil Engineering Branch. Once it approves, then the building permit should be issued.

There is and never was a sublease to Mr. David Kendrick. Mr. Kendrick is serving as a private consultant. He has sold some plants and trees to Mr. Rodrigues.

A Soil and Water Conservation plan is also being processed. All Trees has filed the appropriate documents, attended the required class, and has a meeting with the Conservation Board on July 12 and will report the outcome at the DLNR Board meeting on July 14.

Mr. Tam complains about the loss of agricultural lands in Waimanalo to base yards, construction sites, repair shops and green waste dumps. Again, All Trees' site is being used as a nursery and will continue to be used as such. Mr. Rodrigues is supportive and is a practitioner of farm use as is reflective of his nursery business. Mr. Tam's complaints are inapplicable. Mr. Rodrigues is current on his rent, bond, and has built a viable nursery. To accuse him of fraudulent conduct is rather extreme and unwarranted. Mr. Rodrigues is doing right and should be allowed to carry on his business without this type of harassment and false accusations. Your favorable response and affirmation of his appropriate conduct would be appreciated.

Sincerely,

A handwritten signature in cursive script that reads "Kali Watson". The signature is fluid and extends across the width of the line.

Kali Watson

cc: Rodrigues

\$600.00 per year. At its reopening another appraisal was done which determined fair market rent to be \$7000.00 a year. Based on the increase in the rent the Board raised the question if rent should be set at nominal rate. Mr. Tsuji recommended the Board amend General Lease No. S-5497, Trustees for the Apostolic Faith Church of Honolulu by 1) add "Effective July 1, 2002 to June 30, 2047, the annual rental shall be \$480 per annum" and 2) delete the rental reopenings at the expiration of the tenth (10th), twentieth (20th), thirtieth (30th), and forty-fifth (45th) years of the lease term requirement subject to the conditions listed in staff's submittal.

Edwin Sproat, representing the Apostolic Faith Church of Honolulu noted his agreement with staff's recommendation.

Unanimously approved as submitted (Edlao/Johns).

Item D-10: Status of General Lease No. S-5707, All Tree Services, Inc., Waimanalo, Koolauloko, Oahu, TMK: (1) 4-1-10:48.

Mr. Tsuji reminded the Board at five previous meetings All Tree Service, Inc., has appeared before them to address issues dealing with lease violations (intensive agricultural lease) and use of the property as a baseyard. The lessee was given sixty days to cure the default and the issue was brought back to the Board at which time the item was deferred. At present the baseyard has been eliminated and the property is being used as intensive agriculture but an issue of an unpermitted structure on the site was raised. At All Tree Services, Inc. last appearance before the Board they communicated they were in the process of completing the "as built" plans and submitting the building plans to the County. Due to this County violation the Department issued a notice of default on May 6, 2006 and a sixty day cure period was set in place. As the cure period is still in effect, Mr. Tsuji recommended the Board defer this item until the July 14, 2006 meeting in accordance with staff's comments and recommendations cited in the submittal.

Mr. Tsuji went on to describe the relationship between All Tree Service, Inc. and Mr. David Kendrick as at the previous meeting allegations of an improper sublease were made. Mr. Tsuji let it be known Mr. Watson has conveyed that this issue has been resolved as All Tree Service, Inc., has purchased most of the plants on the subject site and Mr. Kendrick has been employed as a consultant for All Tree Service, Inc.

Chairperson Young made it know he has received the building plans for All Tree Service, and the plans have indicated the removal of the shade house. Chairperson Young questioned the removal of the shade house due to the statement made by the lessee that the shade house is an integral part of their farm plan.

Kali Watson, attorney representing All Tree Service, Inc. indicated it was their intent to include the shade house as part of their operation but after discussion with staff it was suggested that the shade house be removed as it might require another building permit. Mr. Watson noted their view is that the shade house is not a permanent structure therefore a permit is not required. Mr. Watson pointed out should they need the shade house they would send in a request to the department for a permit. In closing, Mr. Watson noted his agreement with staff's recommendation.

Bill Tam, representing the Waimanalo Ag Association appeared before the Board and raised four points: 1) All Tree Service, Inc., was allowed to bid on the subject lease based on plans submitted to the department but All Tree Service, Inc. did not follow through with those plans and based on the changed plans they would not qualify as a bidder. Mr. Tam acknowledged Dean Okimoto would be submitting a declaration stated the above point. They will also submit declarations from four other bidders who bid for the subject property (but did not win) detailing their particular issues; 2) All Tree Service, Inc. has invested money in activities which are not authorized by the lease; 3) The lessee had an oral sublease with Mr. Kendrick; and 4) There are buildings on the property constructed without permits. Mr. Tam encouraged the Board to ask for a sworn declaration as to whether the file plans submitted to DPP had the Chairman's signature on it.

Member Johns told staff when they return for the July 14, 2006 meeting to report on the current violation, compliance on all issues and to address the points raised by Mr. Tam.

Written testimony received from Hawaii Farm Bureau Federation.

Unanimously approved as submitted (Johns/Edlao).

Item F-3: Request for Authorization to Issue One (1) Northwestern Hawaiian Islands (NWHI) Research, Monitoring and Education Permit to Dr. Leszek Karczmarski of Texas A&M University at Galveston for Acoustic Sampling, Genetic Sampling, and Individual Photo-Identification of Spinner Dolphins within Kure Atoll Lagoon, Valid from July 1, 2006 to October 31, 2006.

Ms. Clark conveyed this permit would allow the continued research of spinner dolphins at Kure Atoll and allow Genetic and Acoustic Sampling. She indicated the photo capture work is currently underway based on a previous permit issued to Cynthia Vanderlip. Ms. Clark recommended the board authorize and approve with stated conditions, a Research, Monitoring and Education Permit to Dr. Leszek Karczmarski of Texas A&M University, for activities and access within the State waters of the NWHI.

Dr. Leszek Karczmarski went over the procedure used in conducting the genetic sampling. She noted she would be using a biopsy system which shoots a dart into the dolphin which will take a sample of about five millimeters. She assured the Board this technique is the most humane technique and has very little impact on the dolphins. Dr. Karczmarski informed the Board that the research must take place in the Northwestern Hawaiian Islands (NWHI) as opposed to the main Hawaiian Islands as the spinner dolphins in the NWHI exhibit factors such as a completely different social system, more stable social groups, smaller population sizes and lower genetic diversity.

Member Gon encouraged Dr. Karczmarski to engage in dialogue with 'Ilioyulaokalani Coalition to discuss concerns they may have.

Written testimony was received from 'Ilioyulaokalani Coalition.

Unanimously approved as submitted (Johns/Gon).